

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 2:16-cr-00324-LRH-GWF

ORDER

v.

JESSIE MENDOZA,

Defendant.

Before this Court is the Findings and Recommendations of U.S. Magistrate Judge George W. Foley (ECF No. 66) entered on May 10, 2017, and also his Supplemental Findings and Recommendations (ECF 77) entered on June 7, 2017, recommending denying defendant's Motion to Suppress (ECF No. 36) entered on February 17, 2017. The Magistrate's Findings and Recommendations followed two evidentiary hearings before Magistrate Judge Foley, the first evidentiary hearing being held on April 5, 2017, and focusing upon whether law enforcement lawfully stopped the vehicle occupied by defendant Mendoza on October 22, 2016. The Magistrate Judge declined to conduct a broader evidentiary hearing requested by defendant pursuant to *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674 (1978) but authorized the parties to file supplemental briefs as to whether a *Franks* evidentiary hearing was warranted. Defendant filed his Supplement to Motion to Suppress (ECF No. 63) on April 20, 2017, and the government responded (ECF No. 64) on April 28, 2017. Following those filings,

1 the Magistrate Judge granted defendant an evidentiary hearing pursuant to *Franks v.*
2 *Delaware*. *Id.* The hearing was conducted on May 25, 2017.

3 Following the hearing, the Magistrate Judge issued his Supplemental Findings
4 and Recommendations, recommending that defendant's Motion to Suppress (ECF No.
5 36) be denied.

6 On June 21, 2017, defendant filed his Objections to the Findings and
7 Recommendations and Supplemental Findings and Recommendations of the
8 Magistrate Judge (ECF No. 81), and requested an additional evidentiary hearing
9 pursuant to *Franks v. Delaware*, *id.* On July 5, 2017, the government filed its Response
10 to Defendant's Objections to United States Magistrate Judge's Report of Findings (ECF
11 No. 82).

12 The action was referred to the Magistrate Judge pursuant to 28 U.S.C. §
13 636(b)(1)(B) and Local Rule 1B 1-4 of the Rules of Practice of the United States District
14 Court for the District of Nevada.

15 The Court has conducted its *de novo* review in this case, and has fully
16 considered the objections to the Magistrate Judge's recommendations (ECF No. 81)
17 and the government's response (ECF 82). The court has further considered all briefing,
18 responses and replies which were submitted to the Magistrate Judge, as well as all
19 other relevant matters of record pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule IB
20 3-2.

21 The court notes that the defendant's Motion to Suppress (ECF No. 36) has been
22 thoroughly briefed by the parties, has involved two evidentiary hearings before the
23 Magistrate Judge, and was diligently briefed and considered by Magistrate Judge Foley.
24 The court determines that the Magistrate Judge's Findings and Recommendations (ECF
25 No. 66) entered on May 10, 2017, and his Supplemental Findings and
26 Recommendations (ECF 77) entered on June 7, 2017, should be adopted and
27 accepted.


28 ///

1 It is further determined by the court that a further evidentiary hearing pursuant to
2 *Franks v. Delaware, id.*, is not warranted.

3 IT IS THEREFORE ORDERED that the Magistrate Judge's Findings and
4 Recommendations (ECF No. 66) entered on May 10, 2017, and his Supplemental
5 Findings and Recommendations (ECF 77) entered on June 7, 2017, are adopted and
6 accepted, and defendant's Motion to Suppress (ECF No. 36) is DENIED.

7
8 IT IS SO ORDERED.

9 DATED this 28th day of July, 2017.



LARRY R. HICKS
UNITED STATES DISTRICT JUDGE